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January 31, 2002

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45**

Dear Ms. Salas:

On behalf of the Palau National Communications Corp. ("PNCC"), my colleague Douglas A. Klein and I, and J. Marvin T. Ngirutang, Jr. of the Embassy of the Republic of Palau, met this morning with Sharon Webber, Katie King, and Vickie Byrd of the Common Carrier Bureau; Sonja Rifken of the Office of General Counsel; and Claudia Fox and Lisa Choi of the International Bureau, to discuss the Petition of the Palau National Communications Corporation filed on November 16, 2001.

Attached to this letter are materials that we provided to the FCC staff members in attendance, which summarize the presentation made in today's meeting.

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki  
Counsel for Palau National Communications  
Corp.

Enclosures

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cc: Sharon Webber  
Sonja Rifken  
Vickie Byrd  
Katie King  
Claudia Fox  
Lisa Choi



Palau National Communications Corporation

PNCC

# *Palau National Communications Corporation*

## Petition Regarding Universal Service and NECA Membership

January 31, 2002



## *Palau's Participation in the Universal Service Program Would Serve the Public Interest*

- The United States has a **vital strategic interest** in Palau, particularly given Palau's proximity to some East Asian and Pacific countries that could be among the most critical hot spots in the worldwide war on terrorism.
- PNCC faces a **financial crisis** that was largely brought about by FCC policies reducing international accounting rates to benchmark levels and promoting a more competitive international telecommunications marketplace. The United States has a responsibility to provide explicit universal service support for PNCC's operations as an alternative to the implicit subsidies that are being eliminated.
- The **Compact of Free Association**, which defines the relationship between the United States and Palau, expresses the United States' commitment to advancing the economic development of Palau, including critical infrastructure such as telecommunications networks.



*PNCC's Petition Requests Three Findings:*

- 1) The **FCC has jurisdiction** over PNCC.
- 2) Under **Section 254** of the Communications Act, the FCC should include PNCC in the high-cost universal service program.
- 3) The FCC should **waive the "ILEC" definitions** in certain rules in order to allow PNCC to participate in NECA and in the high-cost universal service support program.



## *1) The FCC Has Jurisdiction Over PNCC*

The language of the Compact plainly extends the FCC's jurisdiction.

*“Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers.”*

*Senate Rept. No. 99-403, P.L. 99-658, at 38.*

The Palau Compact specifically directs the FCC to exercise its Communications Act authority over any carrier that:

- a) is a United States common carrier;
- b) provides domestic and international communications services in Palau; and
- c) does so using satellite earth stations that it owns and that are located in Palau.



## *1) The FCC Has Jurisdiction Over PNCC*

**The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:**

- ✓ **a) is a United States common carrier;**
  - PNCC will be a United States common carrier upon grant of the international Section 214 authority requested in the petition, for which it is indisputably qualified.



## *1) The FCC Has Jurisdiction Over PNCC*

**The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:**

- ✓ a) is a United States common carrier;
- ✓ b) provides domestic and international communications services in Palau;
  - PNCC clearly provides domestic and international communications services to customers in Palau.





## *1) The FCC Has Jurisdiction Over PNCC*

**The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:**

- ✓ a) is a United States common carrier;
- ✓ b) provides domestic and international communications services in Palau; and
- ✓ c) **does so using satellite earth stations that it owns and that are located in Palau.**
  - All communications in Palau are interconnected with the U.S. and international public switched networks via the one satellite earth station in Palau, which PNCC owns.
  - “The FCC shall have jurisdiction over Palau’s domestic services when and if a ‘United States common carrier’ ever furnishes such services by means of satellite earth stations.” AT&T at 4.
  - Regardless of whether the FCC has authority to regulate PNCC’s domestic (or “intrastate”) service in Palau, the FCC has authority to provide federal universal service funding for it, just as it does for other U.S. carriers’ intrastate service.



## *2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program*

- a) For purposes of telecom regulation, the Compact treats Palau as if it were part of the United States (“the Nation”).
- b) The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.
- c) The circumstances of Palau are unique. Making these findings with respect to Palau would not compel the FCC to extend the universal service or NECA programs any further. Other Freely Associated States are subject to a separate Compact.



## *2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program*

- a) **For purposes of telecom regulation, the Compact treats Palau as if it were part of the United States (“the Nation”).**
- b) **The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.**
  - To give meaning to Section 131 of the Palau Compact, “the Nation” should be interpreted to cover all areas under FCC jurisdiction.
  - U.S. law treats Palau as part of the United States for a number of federal programs - including telecommunications regulation.
  - In any event, the FCC retains discretion to strike a “balance” among the principles in Section 254(b); those “lofty and expansive” principles “hardly constitute[] a series of specific statutory commands.” *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).



## *2) Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program*

- a) Section 254 should be read together with the Palau Compact.
- b) The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.
- c) **The circumstances of Palau are unique. Making these findings with respect to Palau would not compel the FCC to extend the universal service or NECA programs any further. Other Freely Associated States are subject to a separate Compact.**
  - GVNW estimates an annual cost not likely to exceed \$6.5 million.

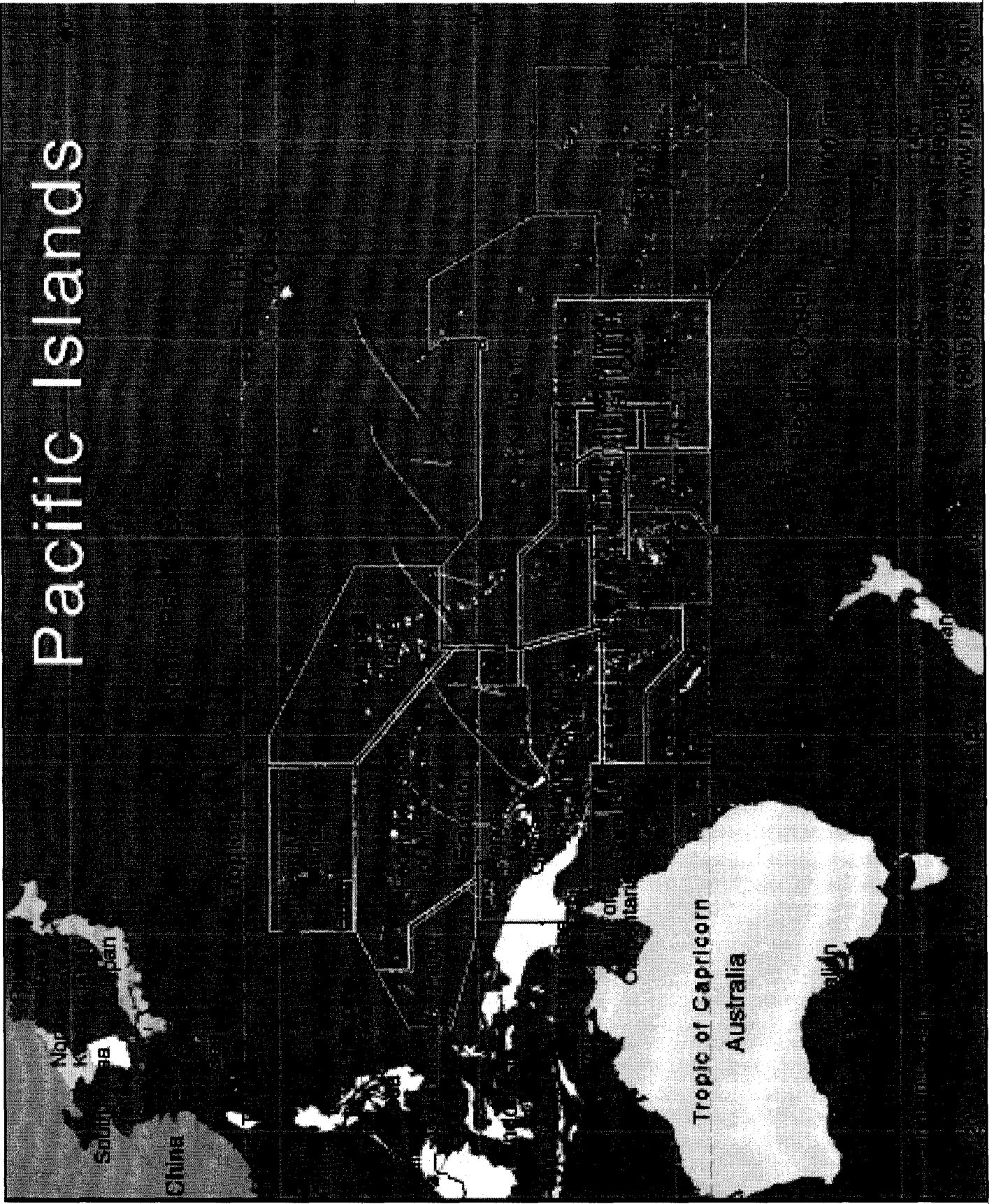


### *3) The FCC Should Waive the “ILEC” Definitions in Certain Rules*

- The Commission’s rules assume that all ILECs participated in NECA in the past. There can be no dispute that PNCC is the ILEC in Palau.
- The FCC has granted very similar waivers for American Samoa Telecom, Guam Telephone Authority, the Offshore Telephone Company, Sandwich Isles Communications, and South Park Telephone Company.
- The only distinction for PNCC is that it is a Freely Associated State. Once the FCC finds that it has jurisdiction over PNCC, there is no distinction between PNCC and those carriers.



# Pacific Islands



the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

### Article III

#### Communications

##### Section 181

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 181(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 181(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 181(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

##### Section 182

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.